

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JESSE COX,

Plaintiff,

vs.

No. CV 19-00770 WJ/KK

CITY OF ALBUQUERQUE POLICE DEPARTMENT,

Defendant.

MEMORANDUM OPINION AND FINAL ORDER OF DISMISSAL

THIS MATTER came before the Court under 28 U.S.C. § 1915A on the Complaint to Recover Damages for Injury filed in the Second Judicial District Court, State of New Mexico on May 22, 2019, and removed to this Court by the Defendant on August 23, 2019. (Doc. 1-1). On February 21, 2020, the Court entered its Memorandum Opinion and Order dismissing the Complaint for failure to state a claim and granting Plaintiff leave to file an amended complaint within 30 days. (Doc. 12). More than 30 days has elapsed and Plaintiff has not filed an amended complaint. The Court will now dismiss this case with prejudice.

In its Memorandum Opinion and Order, the Court determined that Plaintiff Cox had failed to plead that each government official, through the official's own individual actions, has violated the Constitution. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009); *Fogarty v. Gallegos*, 523 F.3d 1147, 1162 (10th Cir. 2008). (Doc. 12 at 4-5). The Court also concluded that the Albuquerque Police Department is not suable entities under § 1983, because it lacks a legal identity apart from the unnamed City of Albuquerque municipality. See *Martinez v. Winner*, 771 F.2d 425, 443 (10th Cir.1985). (Doc. 12 at 6). The Court, however, granted Cox leave to amend his Complaint to cure

the deficiencies in his pleading within 30 days of entry of the Memorandum Opinion and Order. (Doc. 12 at 6-7).

When the Court dismisses a pro se Complaint, the Court is to allow Plaintiff an opportunity to amend the complaint to remedy defects in his pleading. *Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990); *Hall v. Bellmon*, 935 F.2d 1106, 1109-10 (10th Cir. 1991). Plaintiff Cox was given the opportunity to amend his Petition and has failed to do so within the time allowed by the Court. Therefore, the Court will now dismiss this case, with prejudice, under 28 U.S.C. § 1915A on the grounds that his claims fail to state a § 1983 claim for relief on the merits. *Hall v. Bellmon*, 935 F.2d at 1109-10.

IT IS ORDERED that the Complaint to Recover Damages for Injury filed in the Second Judicial District Court, State of New Mexico on May 22, 2019 by Plaintiff Jesse Cox, and removed to this Court by the Defendant on August 23, 2019. (Doc. 1-1) is **DISMISSED with prejudice** and judgment will be entered.


CHIEF UNITED STATES DISTRICT JUDGE